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THIRD DIVISION

[G.R. No. 143432. April 9, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **TERENCIO FUNESTO *y* LLOSPARDAS,** *accused-appellant.*

SYNOPSIS

Through a complaint filed by Rosario Quilantang on behalf of her minor daughter, Louna Mae, appellant herein was charged with the crime of rape in an information. The rape occurred in a one-room house where appellant lived with the victim, her mother, a younger sister, and a baby. Louna Mae informed her mother of the rape only after the appellant was placed behind bars for another charge of rape he allegedly committed against her younger sister. Appellant denied the accusation against him and offered alibi as a defense. He also presented several witnesses to corroborate his story. After trial, appellant was convicted and was sentenced to suffer the penalty of *reclusion perpetua.* From this decision came this appeal, which asserted that the defense of alibi when duly supported by testimonial and documentary evidence should be given credence.

The Supreme Court affirmed the conviction and the imposition of the penalty on the appellant. The Court found no reason to reverse the factual findings of the trial court. The court *a quo* found that Louna Mae's testimony was clear, sincere and credible and that she had no reason to falsely charge appellant for rape. In this case, the alibi of appellant was not airtight. The distance of the compound where the appellant claimed to be at the time of the rape was only about one kilometer away from the house where the rape occurred and the same could be negotiated in a ten-minute walk. Thus, the trial court correctly ruled that it was not impossible for the appellant to be at his house where the rape occurred at the time of its commission.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ACCORDED

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GREAT WEIGHT.— Well-settled is the rule that the findings of the trial court, its conclusions culled from said findings and its calibration of the testimonial evidence of the parties are accorded great weight, if not conclusive effect, by appellate courts. This is because of the unique advantage of the trial court in monitoring and observing at close range the demeanor, deportment and conduct of the witnesses.

2. **ID.; ID.; ALIBI AND DENIAL; WEAK DEFENSES; REQUISITES FOR ALIBI TO PROSPER.**— Alibi and denial are among the weakest, if not the weakest, defenses in criminal prosecution and are practically worthless against the positive identification made by the rape victim. x x x Furthermore, for alibi to prosper, the following requisites must concur: (a) the presence of appellant at another place at the time of the perpetration of the offense; and (b) the physical impossibility for him to be at the scene of the crime.

3. **CRIMINAL LAW; RAPE; PRESENCE OF SEMEN OR SPERMATOZOA IS NOT AN ELEMENT OF THE CRIME; CASE AT BAR.**— As regards the presence of spermatozoa in the cervix of Louna Mae during the examination conducted some three months after the alleged rape, suffice it to say that opinions of forensic experts differ as to how long after sexual intercourse may spermatozoa be found in the vaginal canal. The important consideration in rape is not the presence of semen or spermatozoa, but the penetration of the male penis into the female genitalia. A medical examination is merely corroborative in character and is not an essential element of rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PUNO, *J.*:

Through a complaint filed by Rosario Quilantang on behalf of her minor daughter, Louna Mae Quilantang, appellant Terencio Funesto *y* Llospardas was charged with the crime of rape in an information which reads:

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"That on or about the 11th day of November, 1991, at 9:00 o'clock in the evening, more or less, in (*sic*) the residence of Rosario Quilantang *y* Faller located at Barangay Marcos, Municipality of Magallanes, Province of Agusan de(l) Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with criminal intent, did then and there willfully, unlawfully and feloniously have carnal knowledge of one LOUNAMIE (*sic*) QUILANTANG, an eleven-year old minor, against her will.

CONTRARY TO LAW (Article 335, Revised Penal Code)."[1]

Upon arraignment, Funesto with the assistance of counsel entered a "not guilty" plea. Thus, trial on the merits followed.[2]

Three witnesses were presented by the prosecution, to wit: Louna Mae, the victim; complainant Rosario, the mother of the victim; and Rhodora Gliceria Monton Anino, the doctor who examined the victim.

The evidence for the prosecution shows that the charge of rape occurred on November 11, 1991 in the house of the victim at JCA, Magallanes, Agusan del Norte. Louna Mae lives in the house with her mother, Rosario, her younger sister, Genevieve, a baby, Junmark and appellant Funesto.[3] The house has only one room, with Funesto sleeping inside a mosquito net on one side, and Louna Mae inside another mosquito net with her mother and sister at the other side of the room.[4]

Louna Mae testified that in the evening of November 11, 1991, she was outraged by Funesto, while her mother was leading a prayer in the house of a neighbor and her sister was watching TV.[5] She was awakened by a stabbing pain in her vagina when

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[1] Criminal Case No. 5141, Original Record, p. 1.

[2] This is a joint trial of Criminal Cases Nos. 5141 and 5142, but what is subject of this appeal is only the judgment of conviction in Criminal Case No. 5141.

[3] TSN, Louna Mae P. Quilantang, November 4, 1992, p. 5.

[4] TSN, Terencio L. Funesto, January 31, 1997, p. 5.

[5] TSN, Louna Mae P. Quilantang, November 4, 1992, pp. 9-10.

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Funesto inserted his penis inside it.[6] She could not move because Funesto was on top of her, with his short pants and brief lowered to his knees. She recognized him because there was a light from the lamp on the floor which illuminated the room. After he was done with his beastly act, he warned Louna Mae not to tell her mother or else he would kill all of them, including the baby.[7]

In the morning of November 12, 1991, Louna Mae was bleeding and could not stand up. She also had fever which ran for three (3) days. Her mother thought she had just reached the age of puberty and performed on her a ritual usually done on girls reaching puberty. She desisted from informing her mother of the outrage done on her honor for fear that Funesto would kill them. She informed her mother only after Funesto was placed behind bars for another charge of rape he allegedly committed against Genevieve, her sister. Upon learning of the fate of Louna Mae in the hands of Funesto, Rosario immediately brought her to the hospital where she was examined by Dr. Rhodora Gliceria Monton Anino, and to the police station where their statements were taken.[8]

Dr. Anino testified that she is a Medical Officer III of the Cabadbaran District Hospital and that she examined the victim, Louna Mae, on February 13, 1992.[9] Her examination showed that the victim's hymen was already broken and that the "(i)ntroitus admits 1 small finger and virginal vaginal speculum easily."[10] The witness explained that she inserted her small finger into the victim's vagina and discovered that the finger can be admitted easily as there was no resistance. This procedure is used to determine if the vagina is already slacked. Thus, if the patient is a virgin when the finger is inserted, resistance

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[6] *Id.* at 7.

[7] *Id.* at 7-9.

[8] *Id.* at 10-12.

[9] TSN, Rhodora Gliceria Monton Anino, November 3, 1992, p. 5.

[10] *Id.* at p. 9.

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can be felt. In Louna Mae's case, her vagina admitted the finger inserted by Dr. Anino easily, without any resistance.[11]

She also found the presence of spermatozoa when she got a specimen from the cervix of the victim. On questions by the court regarding the life span of a spermatozoa, the witness answered that it is variable. She stated that the longest life span of a spermatozoa is seventeen (17) days. Thus, she explained that in the case of Louna Mae, the presence of a spermatozoa in her body even after about three (3) months from the act charged, could be due to further sexual intercourse, the dates of which she could not determine and the victim could not remember.[12]

Rosario, the mother of Louna Mae, claimed that on November 12, 1991, she noticed her daughter bleeding. Thinking that the latter had reached the age of puberty, she performed the old custom done on girls reaching the age of puberty, like brushing her cheek with a red flower, putting cotton on her braided hair and letting her jump three steps on the stairs. However, she said that Louna Mae refused to jump because she could hardly stand. Moreover, she had fever which incapacitated her from going to school for more than a week. Rosario likewise declared that her daughter reported the rape committed by Funesto only on February 13, 1992 because she was warned by Funesto that they would all be killed if she reported the incident.[13]

Rosario claimed tearfully that as the natural mother of the victim, she could not describe what she felt when she heard about the outrage on the honor of her daughter. Her worries allegedly cannot be compensated by money because her two daughters were raped by the appellant. She demanded justice for them.[14]

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[11] *Id.* at 9-10.

[12] *Id.* at 11-13.

[13] TSN, Rosario Faller Quilantang, November 5, 1992, pp. 4 and 7-9.

[14] *Id.* at 12-13.

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After the prosecution rested its case, the defense presented four (4) witnesses comprised of appellant Funesto, Rosa Acabado, Faustino Traqueña and Jessie Josue.

Funesto denied the charge of rape. He alleged that in the evening of January 4, 1992, complainant Rosario got inside the mosquito net where he was sleeping. She wanted to have sexual intercourse, but did not pursue her desire.[15] He got mad because he "looked upon her as a parent."[16]

According to Funesto, he went to his office at the EMCO Compound, Magallanes, Agusan del Norte, on February 3, 1992. He wanted to see his foreman, Faustino Traqueña, and to claim his salary for January 3 and 4. However, the company denied that he is an employee or that he worked on January 3 and 4. When he went out of the company compound, three (3) policemen apprehended and brought him to the Municipal Hall of Magallanes. It was there that he learned that a complaint for rape was filed against him by Rosario, who confronted him saying, "You beast. (Y)ou cannot give anything in return. I have allowed you to stay in my house, but you raped my daughters."[17] Thereafter, the police locked him up.[18]

On the night of February 4, 1992, Funesto claimed that policeman Racaza came and offered to withdraw the case if he (appellant) could pay ₱150,000.00,[19] which offer was lowered to ₱80,000.00,[20] and then to ₱10,000.00. Finally, Racaza told him that they were willing to withdraw the case if no counter charges would be filed against them.[21] There were other people who also visited him in his cell on February 4, namely: Rosario

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[15] TSN, Terencio L. Funesto, November 11, 1996, p. 4.

[16] *Id.* at 5.

[17] *Id.* at 15.

[18] *Id.* at 12-16.

[19] *Id.* at 17.

[20] TSN, Terencio L. Funesto, November 12, 1996, p. 3.

[21] *Id.* at 14-15.

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Quilantang's elder sister, Felicitas, and her husband, Rosario's eldest son, Virgilio, and his wife Lalang and their two children.[22]

On February 13, Funesto learned about the complaint for rape, subject of the case at bar. He said that the first police blotter presented to him alleged November 28, 1991 as the date of the commission of the crime. He told policeman Racaza that he was at Barangay Agao, Butuan on that date attending the wake of his cousin, one Belen Acabado Rosales.[23] Racaza left and brought with him the copy of the police blotter. On February 20, another affidavit was given to him (Funesto), this time bearing a different date, November 11, 1991, as the alleged date of commission of the crime of rape.[24] The incident was also recorded in the police blotter.[25]

Funesto alleged that in the evening of November 11, 1991, he was working as veneer clipper at EMCO. He presented as proofs the certification [26] issued by foreman Traqueña and the time sheet[27] issued by the administration office.[28]

In his cross-examination, Funesto stated that he owns the house where he, the complainant Rosario, the victims, Louna Mae and Genevieve, and Junmark live. From the said house, the EMCO Compound is about a kilometer away, and around ten (10) minutes by foot. He admitted that even during work, he sometimes goes home to his house from the EMCO Compound.[29]

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[22] TSN, Terencio L. Funesto, November 11, 1996, pp. 17-18.

[23] Accused presented as evidence the death certificate of Belen Rosales dated July 23, 1996 marked as "Exhibit 1".

[24] TSN, Terencio L. Funesto, November 12, 1996, pp. 2-7.

[25] Exhibit 2.

[26] Exhibit 3.

[27] Exhibit 4.

[28] TSN, Terencio L. Funesto, November 12, 1996, pp. 7-11.

[29] TSN, Terencio L. Funesto, January 24, 1997, pp. 3-13; TSN, Terencio L. Funesto January 29, 1997, p. 4.

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Rosa Acabado, a former *barangay* councilor, testified that on November 25, 1991, her daughter, Belen Rosales, was brought to the Provincial Hospital at Libertad, Butuan City by a group of people, among them Funesto. She asked Funesto to stay at the hospital until November 27 as no one could watch over Belen. In the evening of November 28, 1991, Belen died. Funesto, with other people, brought her cadaver to the funeral parlor. He stayed in her house at Noli Me Tangere Street, Agao, Butuan City, from November 29 until the burial on December 3, 1991.[30]

Faustino Traqueña, the foreman of the Finishing/Recovery section of the EMCO Plywood Corporation, also testified for the defense. He declared that the employees of EMCO are not allowed to leave its premises, except on emergency cases, during their shift time. On the 7:00 p.m. to 7:00 a.m. shift, their workers are only allowed a thirty-minute break at 12:00 midnight and they stay within the compound. He has a table in the middle of the section where he could see everything but he did not tell where the workers eat during mealtime. He also said that the production report[31] showed that the output of Funesto on November 11, 1991 was 132 sheets. He opined that if Funesto got out of the work place, he could not produce 132 sheets.[32]

Jessie Josue, former *barangay* captain of Barangay Pigdaulan, Butuan City, corroborated the testimony of Rosa Acabado. She declared that Funesto went to her house in the evening of November 25, 1991 to borrow her tricycle to bring Belen Rosales to the hospital. She stayed with them until 4:00 a.m. She likewise saw him on November 27 in the hospital and in the evening of November 28 during the wake of Belen. She claimed that Funesto was in the house of the deceased during the one-week wake. However, upon cross examination, she admitted that while the wake lasted for nine (9) days, she was not there everyday, but only 3 or 4 times.[33]

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[30] TSN, Rosa Durango Acabado, March 18, 1997, pp. 3-7 and 13-17.

[31] Exhibit 4-A.

[32] TSN, Faustino Busa Traqueña, May 9, 1997, pp. 5-11.

[33] TSN, Jessie Morales Josue, June 27, 1997, pp. 2-5 and 9-10.

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The trial court convicted the appellant, thus:

"WHEREFORE, the court hereby finds accused TERENCIO FUNESTO *Y* LLOSPARDAS guilty beyond reasonable doubt for the crime of Rape as defined and penalized under Article 335 of the Revised Penal Code and accordingly hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*, condemning and ordering said accused to pay the victim Lounamae (*sic*) F. Quilantang the amount of ₱100,000.00 as compensatory and moral damages and the amount of ₱50,000.00 to Rosario F. Quilantang, the mother of the victim as moral damages.

The accused, in the service of his sentence shall be credited of (*sic*) the period of his (*sic*) preventive imprisonment he has so far undergone pursuant to RA No. 6127.

SO ORDERED."[34]

From this decision, Funesto appealed and raises the lone argument that the trial court erred in finding him guilty beyond reasonable doubt of the crime of rape.[35] He points out that the medical examination was conducted some three (3) months after the alleged rape and dead spermatozoa was discovered in Louna Mae's cervix. He contends that the sexual abuse "could have been committed by (a) man other than the herein accused-appellant which the court *a quo* failed to clarify at all."[36] He asserts that the defense of alibi or denial when duly supported by testimonial and documentary evidence should be given credence.

We do not agree. Funesto's argument entails a re-examination of the credibility of witnesses. Well-settled is the rule that the findings of the trial court, its conclusions culled from said findings and its calibration of the testimonial evidence of the parties are accorded great weight, if not conclusive effect, by appellate courts. This is because of the unique advantage of the trial

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[34] *Rollo*, pp. 49-50.

[35] *Id.* at 76.

[36] *Id.* at 80.

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court in monitoring and observing at close range the demeanor, deportment and conduct of the witnesses.[37]

We find no reason to reverse the factual findings of the trial court. The court *a quo* found that Louna Mae's testimony was clear, sincere and credible and that she had no reason to falsely charge Funesto for rape. Indeed, it is highly inconceivable that Louna Mae, a young and innocent girl, would concoct a tale of defloration, allow the examination of her private parts and undergo the ordeal, not to mention the trauma of a public trial, unless the charge of rape against Funesto occurred. It is more implausible for the complainant Rosario to use her daughter to wreak vengeance, as Funesto would want us to believe, especially if it will subject the latter to the embarrassment, trauma and stigma attendant to a rape trial. It is a natural fact that mothers are protective of their children and they are willing to give up their lives to spare them from any threat or from any embarrassment, ridicule and any taint on their reputation.

Moreover, alibi and denial are among the weakest, if not the weakest, defenses in criminal prosecution and are practically worthless against the positive identification made by the rape victim.[38] Louna Mae positively identified appellant as the culprit:

"Atty. Batad:

Q: How did you recognize Terencio Funesto when the incident happened in the evening?
A: Because the light was bright.

Q: Where was the light then that illuminated that evening (*sic*) that caused you to recognize the accused?
A: It was placed on the floor.

Q: What kind of light?
A: Light from a lamp."[39]

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[37] *People of the Philippines vs. Ruperto Ramos y dela Cruz,* G.R. No. 142577, December 27, 2002, citing *People of the Philippines vs. Aurelio Delovino*, 247 SCRA 637 (1995).

[38] *People of the Philippines vs. Amado Isla, Jr.*, G.R. Nos. 140211-13, May 29, 2002.

[39] TSN, Louna Mae P. Quilantang, November 4, 1992, p. 8.

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Furthermore, for alibi to prosper, the following requisites must concur: (a) the presence of appellant at another place at the time of the perpetration of the offense; and (b) the physical impossibility for him to be at the scene of the crime.[40] In this case, the alibi of appellant is not airtight. The distance between the EMCO compound and the house of appellant, where the act of rape occurred, is only about one (1) kilometer, which can be negotiated in ten (10) minutes of walk, *viz*:

"Pros. Gallarde:

Q: From this house where (*sic*) you said you bought it (*sic*) from one Juaning Doe, how far is that (*sic*) to the EMCO Compound where you were then a casual employee?
A: More or less 1 kilometer.

Q: And with that distance, Mr. Funesto, you can walk if you prefer to walk and not ride a tricycle is only around 5 to 10 minutes, (*sic*) am I correct?
A: About 10 minutes walk.

Q: And during your employment, especially (during) the (*sic*) specific hours, sometimes you go home to your house from your work to (*sic*) EMCO Compound, am I correct?
A: Sometimes, sir."[41]

Thus, the trial court correctly ruled that it was not impossible for Funesto to be at his house where the rape occurred at the time of its commission.

As regards the presence of spermatozoa in the cervix of Louna Mae during the examination conducted some three months after the alleged rape, suffice it to say that opinions of forensic experts differ as to how long after sexual intercourse may spermatozoa be found in the vaginal canal.[42] The important consideration in rape is not the presence of semen or

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[40] *People of the Philippines vs. Cenon Pagsanjan y Carlos*, G.R. No. 139694, December 27, 2002.

[41] TSN, Terencio L. Funesto, January 24, 1997, p. 6.

[42] *People of the Philippines vs. Guilbert Arcillas y Perez*, G.R. No. 126817, December 27, 2000.

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spermatozoa, but the penetration of the male penis into the female genitalia.[43] A medical examination is merely corroborative in character and is not an essential element of rape.[44] In the case at bar, Louna Mae categorically testified that appellant inserted his penis into her vagina, *to wit*:

"Atty. Battad:

Q: What time of November 11, 1991 did the accused outrage your Honor?
A: It was in the evening.

Q: Now, how did the accused outrage your honor that evening?
A That evening, I was sleeping(,) and (*sic*) I was awakened because of the pain in my vagina because Terencio Funesto inserted something hard inside my vagina and I cannot move because he was on top of me and it seemed I was deafened because of the pain in my vagina.

Q: Where was Terencio Funesto when you were awakened by the pain which caused you almost deafness?
A: She (*sic*) was on top of me with his face towards me.

x x x x x x x x x

Q: How long did the accused placed (*sic*) himself on top of you, if you can recall?
A: I think it was just a short time.

Q: Did you know what was it that went inside your vagina that caused you tremendous pain?
A: Yes, sir.

Q: What was it, if you can identify it?
A: *His penis*."[45] (*italics supplied*)

As for the civil liabilities of the appellant, we modify the monetary award granted by the trial court. Upon the finding of

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[43] *Ibid.*

[44] *People of the Philippines vs. Rico B. Bagaua*, G.R. No. 147943, December 12, 2002, citing *People vs. Velasquez*, G.R. Nos. 142561-62, February 15, 2002.

[45] TSN, Louna Mae P. Quilantang, November 4, 1992, pp. 7-8.

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the fact of rape, the award of civil indemnity *ex delicto* is mandatory. Moreover, Article 2219 of the Civil Code provides for recovery of moral damages in cases of "x x x (3) seduction, abduction, rape, or other lascivious acts." It likewise allows the parents of the female seduced, abducted, raped or abused to recover moral damages.[46] Accordingly, appellant should be made to pay the victim ₱50,000.00 as civil indemnity, and to pay the victim and her mother ₱50,000.00 as moral damages.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Butuan City, Branch 2, finding accused-appellant Funesto guilty beyond reasonable doubt of the crime of rape and imposing upon him the penalty of *reclusion perpetua* is *AFFIRMED*, with the modification that he is adjudged to pay the victim, Louna Mae, ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the victim and her mother Rosario.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.*, concur.

FIRST DIVISION

[G.R. No. 146034. April 9, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LASTIDE A. SUBE, ROLANDO M. MENZON, DINO G. AYALA (At Large), BENEDICTO A. ACALA (At Large) and FELIZARDO ONTOG,** *accused.*

LASTIDE A. SUBE, ROLANDO M. MENZON and FELIZARDO ONTOG, *accused-appellants.*

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[46] See also *People of the Philippines vs. Reynaldo Tagun*, G.R. No. 137745, February 15, 2002 and *People vs. Oarga*, 259 SCRA 90 (1996).